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EFFECT OF CONVERSION AND RE-MARRIAGE OF HINDU WIDOW ON HER PROPRIETARY RIGHTS.

Ancient Hindu Law is silent on this topic. Whether Hinduism was not a proselytising creed, or whether re-marriage of widows was unknown to the Hindus apart from custom—a body of immemorial usages which existed independent of, and prior to, the Sanskrit Law of the Aryans—, it is now covered by authority that conversion and re-marriage are permitted by Hindu Law. As to the effect of Hindu widow's re-marriage after conversion on her existing rights, there is a considerable conflict of judicial opinion among the High Courts in India. There is no authoritative pronouncement of the Privy Council on this question. We attempt to examine briefly in broad outlines this moot point in Hindu Law.

The term "conversion" is not necessarily change of religion, but means and includes change of social order or caste as well. We propose to deal with conversion under two heads—(*i*) Social conversion, and (*ii*) Religious conversion. Was social conversion recognised by the ancient Hindus, and if so what was its effect on the rights of the convert? This aspect of the question, as far as we can see, has not come up before the Courts of Law. The answer to such an inquiry serves if at all but an academic value. This kind of conversion was not easily achieved. Before this conversion or change from one social order to another obtained religious sanction in ancient times, the matter had to pass through several stages of Aryan civilisation resulting in internal dissensions, protracted struggles and no common sanguinary warfares.[1] Thus was the battle fought and peace concluded. Rajanyas like Visvamitra, Vithahavya and Janaka, to

1. Dr. Muir's "Original Sanskrit Texts," Vol. I, Ch. IV.

mention a few, were elevated to Brahmanhood. If conversion from a lower to a higher order within the four walls of Hinduism was not only possible but was permitted and recognised by eminent ancient sages, it follows *a fortiori* that conversion from a higher to a lower order is possible. Then what is the effect of such conversion on the existing rights of the convert? Ordinarily on the general principles of jurisprudence and considerations of equity, it can be safely said that on such conversion a Hindu should not be divested of the estate already vested in him, in the absence of any express texts of Hindu Law to the contrary. We are also fortified by another consideration. So long as the caste-system did not assume a definite shape, as it was undoubtedly unknown to the ancient Aryan-man and to the composers of the Vedic hymns,[2] the rights of the convert are to be regulated and determined by the prevailing practices of the times. Therefore in that state of society a widow-convert could not possibly forfeit her rights to the estate of her first husband if her re-marriage was permitted by custom. This state of society, however, did not last long. The universal principle of "division of labour" was replaced by a "religious element" in later times and the conduct of the Aryan-man came to be influenced by this religious impact. Law imposed penalties whenever the integrity of social order or the purity of blood was in danger of being threatened or violated. The principle *"Poeta nascitur, non fit"* applied with equal force to a Hindu. This was the state of affairs till 1850.

In 1850 "The Caste Disabilities Removal Act" called also "The Freedom of Religion Act" was passed. Its object was to relieve the convert from the trammels of law. Whether the Act was intended to relieve social converts of this class who remain as Hindus and who desire to be governed by the principles of Hindu Law, it is hard to decide. It has been held that the Act saves an "outcaste"—man or woman, widower or widow—from forfeiture of his or her rights to property, vested or contingent.[3] The term "outcaste" though technically means a Hindu convert from one order to another, it connotes in ordinary parlance a degraded Hindu and who is subject to social ostracism. It is really the object of the Act to give protection to such people.

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2. Max Muller's "Chips from a German Workshop," Vol. II. *Vide also* his remarks on Purusha Sukta (*Rig Veda,* I. 90) in his "History of Sanskrit Literature."

3. *Khunni Lal* v. *Gobind Krishna Narain,* (1911) 21 M.L.J. 645: 35 A. 356 (P.C.); *Bhujjun Lal* v. *Gya Pershad,* (1870) 2 N.W.P. 446 and *Ram Pergash Singh* v. *Mt. Dahan Bibi,* (1923) I.L.R. 3 Pat. 152.

In the several cases that came up before the Courts, the convert is from a higher to a lower caste. But the difficulty arises when the convert is from a lower to a higher order. The Courts were not called upon to consider the effect of emulating or enhancing one's social order on one's existing rights. Does Act XXI of 1850 contemplate such cases; and, if so, does it save the convert from forfeiture of his entire property as per the provisions of the Act, or only certain items of the property as it appears to be reasonable and just? That is, if a Hindu of a lower order enhances his social order, is he entitled to hold such items of property as sheep or poultry which a member of his higher caste is not permitted under Hindu Law to possess? This difficulty can also be felt in the other case. That is, where a Hindu degrades himself or becomes an outcaste, is he entitled to hold such items of property as family idols or objects of religious worship which a member of his lower caste as a Hindu is not allowed to possess? There is the difficulty either way against the retention of entire property in the case of converts who are within the pale of Hinduism and who want to be governed by Hindu Law. The object of the Act is not to save such people.[4] We cannot, however, ignore the general principle of equity that an estate once vested cannot be divested which applies to such converts independently of the Act. We therefore submit that the answer to this question must be sought in the compromise between religious susceptibilities and equities of environment. As to the effect of re-marriage of a widow of this class on her rights to the estate of her first husband, the answer is not difficult. The widow is a Hindu despite her conversion. If she re-marries, she forfeits the estate under Hindu Law; for she has not "kept the bed of her lord unsullied."[5] The same is her position under Act XV of 1856 as clearly expressed by S. 2 of the Act. Different considerations must prevail if remarriage is permitted by custom. The reasons for such a view will be considered later on.

The second aspect of conversion, namely, religious conversion or change of religion may be dealt with. Does a Hindu woman forfeit her husband's estate on her apostacy under Hindu Law? Whatever might be the principle originally and historically speaking, upon which the right of inheritance and succession of a widow to her husband's estate is founded, so far as a widow under Hindu Smritis is concerned, her heritable

4. *Bishambar Das v. Gobind Das,* (1914) 23 I.C. 301.
5. *Per* Katyayana.

capacity is based upon a religious doctrine. A Hindu woman after her husband's death inherits his estate on the theory that she is the surviving half of the body of her husband, and on the principle that she confers spiritual benefit on her deceased husband.[6] The Smriti writers penalised the renunciation of religion by forfeiture of property. Therefore apostacy of a Hindu widow entailed forfeiture of her husband's estate. This state of things, however, could not continue long. By virtue of Act XXI of 1850 apostacy of a Hindu widow does not involve forfeiture of her rights; neither does this Act enlarge her rights.[7] This is the state of the law at the present day.

What then is the effect of re-marriage of a Hindu widow after conversion on her rights under the personal law of the Hindus and under the statutes? Firstly, her position under Hindu Law may be examined. The earliest case on the point is *Matungini Gupta* v. *Ram Rutton Roy*[8] a decision of five Judges of the Calcutta High Court. This is not, however, a direct authority on this aspect of the question. The facts of the case are singular. A Hindu widow declares falsely that she is a Brahmo and then re-marries a Brahmo under Act III of 1872. The majority of the Full Bench held that by her re-marriage she forfeited her interest in her first husband's estate. The result was arrived at on a consideration of S. 2 of Act XV of 1856, to which we return presently, though an attempt was made at its effect under Hindu Law. So far as the result is concerned, we agree with their Lordships for the following reasons. In this case there is no question of conversion at all. The widow at the time of her re-marriage is not in fact a Brahmo but a Hindu. As a Hindu she forfeits her rights under Hindu Law and under S. 2 of Act XV of 1856. When she could not get by honest means how could she hope to better her position by false pretensions? Courts ought not to encourage the fraudulent and the unscrupulous. Again, even if she is a Brahmo at the time of her re-marriage, there is no question of religious conversion. As a Brahmo she is still a Hindu and is amenable to Hindu Law. In either case there is forfeiture. But we are unable, with all respect to their Lordships, to accept their reasons for this view.

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6. *Per* Vrihaspati and Yajnavalkya.

7. *Kishen Singh* v. *Bhagwan Das,* (1915) 31 I.C. 476; *Khunni Lal* v. *Gobind Krishna Narain,* (1911) 21 M.L.J. 645: 35 A. 356 (P.C.) and *Pathumma* v. *Raman Nambiar,* (1921) I.L.R. 44 M. 891: 41 M.L.J. 243 (F.B.).

8. (1891) I.L.R. 19 C. 289 (F.B.).

The nature of the estate of a Hindu widow under Hindu Law was also discussed in the case. According to the referring Judges Wilson and Banerji, JJ., who were also in the Full Bench, it was an estate during widowhood and liable to forfeiture upon a second marriage. This was also the view of the majority judges, Sir John Wallis, C.J., and Oldfield, J., in *Vitta Tayaramma* v. *Chatakondu Sivayya*[9] where the facts are a Hindu widow becomes a Muhammadan and marries a Muslim according to Muhammadan rites. With all respect it is difficult to accept this view. The estate of a Hindu widow is not laid down by any text to be an estate during widowhood *durante viduitate*. A Hindu widow can alter the tenure of her estate by alienation. It can be shortened during widowhood or extended beyond widowhood. Even if the estate of a widow is still a widow's estate after alienation, the surrenderee, or the donee or trustee of a religious endowment, or the purchaser can hold the estate beyond her widowhood. When once an estate is a widow's estate, it is immaterial who holds the estate, whether the holder is a widow or an alienee from her. Also an estate which a widow holds need not necessarily be a widow's estate. Hence a widow's estate need not be an estate during widowhood, nor need an estate during widowhood be a widow's estate. To hold therefore that forfeiture under Hindu Law is entailed "by reason of the incompatibility between the renunciation of a widow's status and the retention of a widow's estate'' is, we submit with due respect, unwarranted by authority.

Their Lordships also justify the forfeiture on the principle of analogy. The effect of re-marriage of a widow permitted by custom on her first husband's estate was considered. In those cases no question of apostacy is involved. There is also a conflict of opinion among the several High Courts. According to Allahabad, where a custom while permitting re-marriage of a Hindu widow is silent as to its effect on her right to the estate of her first husband, her re-marriage does not entail forfeiture of her rights.[10] This is also in consonance with the ordinary principles of jurisprudence that a custom should be so interpreted as to be beneficial to the person seeking protection under it. This view has been consistently followed by that Court though in later cases the learned Judges hesitated to accept the former

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9. (1918) I.L.R. 41 M. 1078: 35 M.L.J. 317 (F.B.).
10. *Har Saran Das* v. *Nandi*, (1889) I.L.R. 11 A. 330.

view.[11] But the view taken in *Har Saran Das* v. *Nandi*[10] was maintained throughout on the principle of *cursus curiæ*. Patna and Oudh are to the same effect.[12] Madras, Bombay and Calcutta take a different view. According to them, she forfeits her estate. The reasoning adopted by these Courts is twofold. On the authority of Steele's "Indian Castes" it is held that the practice of widows forfeiting their rights in their first husbands' property on re-marriage is a "universal practice." If really it is such a universal practice in India as remarked by Mr. Justice Ranade, the caste custom permitting re-marriage of Hindu widows is not silent but is sufficiently eloquent. There is no force in *argumentum ab silentum*. Thus this view is distinguishable from the Allahabad view.[13]

As to the observation of Mr. Justice Ranade of the Bombay High Court that forfeiture of widow's right is a universal practice in India, we may just say a word. This view was questioned by Mr. Justice Krishnan of the Madras High Court. Of a race of this ancient people scattered through the length and breadth of the land with different types of civilisation—different in stature and colour, different in language and dress, different in habits and manners—we are not aware that there are not instances where a widow does not forfeit her estate on her re-marriage. Among them some are nomadics and cave people whose "short and simple annals" are unheard of. Never did the bard sing nor the ethnologist relate "their homely joys and destiny obscure." Among them there are still polyandrous tribes where the addition of a husband to the plurality of her mates on the death of one does not entail a forfeiture of the rights of the woman to the estate of her deceased spouse. Again, among them there are cases where a widow while foregoing her right to her husband's estate on re-marriage, gets the estate on the death of the second husband in the event of the latter dying without means. The right is not lost for ever but is postponed till a contingency arises. In several cases the retention of the widow's estate is incompatible with the determination of the widow's right to maintenance.

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10. (1889) I.L.R. 11 A. 330.

11. *Gajadhar* v. *Kaunsilla*, (1908) I.L.R. 31 A. 161 and *Mula* v. *Partab*, (1910) I.L.R. 32 A. 489.

12. *Mt. Palti* v. *Nirdhan Gope*, (1923) 1 Pat. L.R. 390 and *Bhagwan Din* v. *Indrani*, (1921) 65 I.C. 117.

13. *Koduthi* v. *Madu*, (1884) I.L.R. 7 M. 321; *Vithu* v. *Govinda*, (1896) I.L.R. 22 B. 321 (F.B.) and *Rasul Jehan Begum* v. *Ram Surun Singh*, (1895) I.L.R. 22 C. 589.

The second ground according to these Courts is based on the fiction that the widow is the surviving half of her husband.[14] The application of this principle to people who are governed by rules of unwritten law different from the law of the Smritis, is undoubtedly unhappy. Such a principle is not only unknown to them but is unsuited, if not repugnant, to their mode of life and archaic customs.[14-a] It is curious indeed to hold further that a Hindu widow after conversion and re-marriage while ceasing to be the surviving half of her Hindu husband, becomes instead the surviving half of her non-Hindu second husband.[8] In the result, the pushing of analogy to the case of converts, that is, to circumstances fundamentally different, is unsound. It is against all canons of logic; it is equally opposed to all principles of equity.

Apart from these considerations there is another difficulty. The view that a widow's re-marriage after conversion entails forfeiture of her first husband's estate is opposed to the general principle of Hindu Law enunciated by the Privy Council in *Moniram Kolita* v. *Keri Kolitani*.[15] The law as stated by the Board in that case is, "that an estate once vested by succession or inheritance is not divested by any act or incapacity, which, before succession, would have formed a ground for exclusion from inheritance.'' It was also held that a widow's estate already vested in her could not be divested by her unchastity. If forfeiture in our present case is not opposed to this Privy Council decision, is widow's estate an exception to the general rule as laid down by the Board? Whether the estate of a Hindu widow is an exception to this general rule has been seriously doubted by the Courts. The view in *Chowdappa* v. *Narasamma*[16] is that a widow's estate is not an exception to this general rule. The view in *Matungini Gupta* v. *Ram Rutton Roy*[8] is that it is. The referring Judges in the latter case observe that the Board in *Moniram Kolita* v. *Keri Kolitani*[15] did not consider the question of re-marriage but only of chastity; and there is a very broad distinction between misconduct on the part of a widow as a widow, and her ceasing to be a widow. This was also the reasoning of the majority Judges in the *Vitta Tayaramma's case*[9] where it was observed, "Unchastity is uncertain and

8. *Per* Wilson, J., in (1891) I.L.R. 19 C. 289 (F.B.).
9. (1918) I.L.R. 41 M. 1078: 35 M.L.J. 317 (F.B.).
14. *Murugayi* v. *Viramakali*, (1877) I.L.R. 1 M. 226.
14-a. *Katama Nachiar* v. *Dorasinga Tevar*, (1870) 6 M.H.C.R. 310 at 341—*Per* Holloway, J.
15. (1880) L.R. 7 I.A. 115: I.L.R. 5 C. 776 (P.C.).
16. (1917) 23 M.L.T. 84.

changeable by conduct whereas re-marriage is a definite legal step by which the woman ceases to be any longer the widow of the deceased. . . . Forfeiture is an inevitable incident of 're-marriage though not of unchastity." Be it what it may, there is the distinction. But this distinction only applies to a widow who is within the ambit of Hindu religion. Her position after conversion is different. Act XXI of 1850, to which reference was made, governs her. The observation of Sir John Wallis, C.J., which is also the opinion of the majority of the Full Bench in *Vitta Tayaramma* v. *Chatakondu Sivayya*[9] is as follows: "Act XXI of 1850 though it relieved the widow of a Hindu from forfeiture of her widow's estate on her abjuration of Hinduism, did not *enlarge the nature of that estate*, so as to relieve her from forfeiture in the event of her renouncing her status of widow by re-marriage." With all respect, we cannot accede to this view. It is no doubt true, as observed by the Privy Council and it is also the policy of the Act, that Act XXI of 1850 does not enlarge or restrict the interest of the convert. Is there any enlarging of interest in the present case? Certainly, there is nothing of the kind. The Hindu widow has the right to the estate of her husband (before her conversion and re-marriage). This is unaffected by her conversion. It is also unaffected by subsequent event on the part of the convert (other than causing waste to the property or defeating the right of reversioners). Re-marriage is thus a subsequent act on the part of the convert, and therefore the effect of re-marriage cannot entail forfeiture of her first husband's estate. To hold therefore that there is the enlarging of her estate is an anomaly. Conversely if her estate is to be forfeited by her re-marriage, it is clearly imposing a condition or restriction on the right of the convert to the estate of her first husband, which right was not subject to any condition or restriction originally at the time of her conversion. To hold that there is the enlarging of interest on conversion and re-marriage is therefore inconsistent with, and repugnant to, the express provisions of the Act. The unhappy conclusion for the forfeiture of a Hindu widow's estate after conversion and re-marriage is due to the notions of Hindus that the heritable capacity ceases with the cessation of widowhood, and their application to a person who ceases to be governed by Hindu Law. This is the inevitable temptation one should be guarded against. The Allahabad High Court in *Abdul Aziz Khan* v. *Nirma*[17] holds that a Hindu widow who

17. (1913) I.L.R. 35 A. 466.

becomes a Muhammadan and marries a Muhammadan husband according to her new religion does not forfeit her right to the estate of her first husband. Such a question has not presented itself before the other High Courts in India. The view of the Allahabad High Court was followed by Mr. Justice Seshagiri Aiyar in his dissenting judgment in *Vitta Tayaramma* v. *Chatakondu Sivayya*[9] where it was held, "The rule of Hindu Law that a widow who re-marries and is thus not true to the bed of her deceased husband cannot inherit to his estate can be applied only when she is within the pale of Hindu Law. Her re-marriage after apostacy cannot divest her of the right to inherit which subsisted to her at the date of her conversion to another religion."

The effect of re-marriage after conversion under Act XV of 1856 may now be discussed. In *Matungini Gupta* v. *Ram Ruttan Roy*[8] the opinion of the majority of the Full Bench is that re-marriage after conversion entails forfeiture under Act XV of 1856. The learned Chief Justice observes: "Section 2 includes all widows who are within the scope of the Act, that is to say, all persons who being Hindus become widows." The Allahabad High Court in *Abdul Aziz Khan* v. *Nirma*[17] while dissenting from the Calcutta view held, "Section 2 of Act XV of 1856 does not apply, as it cannot possibly include all widows. It is necessarily confined to 'Hindu widows.' The woman was not a Hindu when she was married to a Muhammadan husband.'' This was also the view of Prinsep, J., the dissenting Judge, who holds, "Section 2 of Act XV of 1856 does not apply to all Hindu widows re-marrying, but only to Hindu widows re-marrying as Hindus under Hindu Law as provided by the Act." The argument of the referring Judges in *Matungini Gupta* v. *Ram Ruttan Roy*,[8] namely, "The words 'any widow' occurring in section 2 must be taken to mean any widow to whom the Act applies and for whom it was intended, that is, any widow who is a Hindu, not only at the time of her succession, but also at the time of her re-marriage; and the word 're-marriage' in the section must be taken as meaning re-marriage contracted under the Act in accordance with Hindu ceremonies" only supports the view of their colleague, Prinsep, J. A different conclusion, it appears to us, is impossible from this argument. The opinion of the majority of the Full Bench in

8. (1891) I.L.R. 19 C. 289. (F.B.).
9. (1918) I.L.R. 41 M. 1078: 35 M.L.J. 317 (F.B.).
17. (1913) I.L.R. 35 A. 466.

Vitta Tayaramma v. *Chatakondu Sivayya*[9] is that section 2 does not apply to such a case. A case of conversion followed by re-marriage of a Hindu widow has not come up before the Bombay High Court. Their Lordships, however, expressed their opinion as to the construction of section 2 of the Act while considering the effect of re-marriage of a Hindu widow permitted by custom. The scope of section 2 under similar circumstances was also considered by Madras, Allahabad and Calcutta High Courts. In all these cases there was no question of conversion. We submit at the outset that the decisions in the several cases are irrelevant to our present inquiry. However, we just note what these Courts have to say if there is any bearing on the subject at hand. The Allahabad High Court has been consistently holding since *Har Saran Das* v. *Nandi*[10] that S. 2 does not apply to the case. The view of the Madras High Court is conflicting. In *In re Doraswami Thevar*[18] it is held that there is forfeiture under section 2, but *Chowdappa* v. *Narasamma*[16] refuses to follow this view. So far as the Calcutta High Court is concerned it is held in *Rasul Jehan* v. *Ram Surun*[19] that there is no forfeiture under section 2 of the Act. The Bombay view in *Vithu* v. *Govinda*[20] is that section 2 governs such cases. The better view seems to be that if re-marriage of a Hindu widow is permitted by custom, S. 2 of the Act does not take away her rights on re-marriage. The words "with certain exceptions" occurring in the preamble to the Act are significant. They clearly indicate that the Act does not apply to Hindu widows who can marry independent of the Act.

We now pass on to consider the scope of the Act and its applicability or otherwise to our present discussion. The title of the Act is "The Hindu Widow's Re-marriage Act, 1856" and in Indian Short Titles it is worded as "Removing all legal obstacles to the marriage of Hindu widows." This Act gives a legislative sanction to the re-marriage of Hindu widows under Hindu Law. It is purely an enabling Act intended to remove "all obstacles to the re-marriage" a Hindu widow is labouring under. The Act intends to confer certain rights on a Hindu widow, which rights she could not exercise under her personal law. It is not intended to interfere with, or impose restrictions upon, her rights which her personal law or custom does not take away. This is

9. (1918) I.L.R. 41 M. 1078: 35 M.L.J. 317 (F.B.).
10. (1889) I.L.R. 11 A. 330.
16. (1917) 23 M.L.T. 81.
18. (1912) 12 M.L.T. 158.
19. (1895) I.L.R. 22 C. 589.
20. (1896) I.L.R. 22 B. 321 (F.B.).

the object and the policy of the Act as can be gathered from its preamble and general scheme.

Considerable difficulty has been felt as to the interpretation of section 2 of the Act. This section says, "All rights and interests which any widow may have in her deceased husband's property, ... shall, upon her re-marriage, cease and determine as if she had then died; . . . ." Though re-marriage and unchastity are both sinful under Hindu Law, it is an anomaly that subsequent unchastity is no ground of forfeiture, whereas by the operation of the Act, re-marriage entails forfeiture of her rights in her husband's estate. This is largely due to the fact that the legislation dealt with that portion of Hindu Law.

For a proper interpretation of the section, certain endeavour is to be made for the meaning of several terms occurring in the section and the Act but unfortunately left undefined by the Act. The term "Hindu widow" occurring in the title and the body of the Act has been held as meaning "the widow of a Hindu". It was thought sufficient if the deceased husband was a Hindu whether or not the woman was a Hindu at the time of her re-marriage. The widow of a Hindu need not be a Hindu at all even at the time of her marriage. She cannot be a Hindu widow according to the Act. Conversely, if a Hindu husband becomes a Christian or a Muhammadan and as a consequence of such conversion his wife separates herself, then if the husband dies, she cannot be the widow of a Christian or a Muhammadan consistently with her religious sentiments. The term "Hindu widow" has been held to be a widow who is a Hindu. At the time of re-marriage after conversion, she is not a Hindu and therefore not a Hindu widow. Again, the widow who is a Hindu might not have married a Hindu husband. Either view is not free from objection. A Hindu widow according to Act XV of 1856 must be a Hindu and must have married a Hindu according to Hindu rites. Further, the term "re-marriage" occurring in the title and the body of the Act means the marriage of Hindu widows to whom the Act applies and for whom it was intended. Hence section 2 of the Act does not govern cases of re-marriage after conversion as the Act does not apply to apostates. This is also evident from the wording of the title of the Act itself.

That the intention of the Legislature was to apply this Act to Hindus *alone* and not to converts from Hinduism is also significant from the expression "Hindu Widow's Re-marriage" occur-

ring in the title. If really the Act was intended to apply to apostates from Hinduism, the Legislature would have termed the Act as "The Hindu Widow's Marriage Act" since marriage after conversion is not re-marriage according to the new religion. Or again, the Legislature would have termed it as "The Hindu Woman's Re-marriage Act." It was not so termed because they wanted to avoid its scope being extended to circumstances not contemplated by the legislature like divorce or dissolution of marriage wherever it is possible, or widowhood by presumptions of law.[21] The Act has been deliberately styled as "The Hindu Widow's Re-marriage Act". The expression "Hindu Widow's Re-marriage" is by no means redundant; it is intentionally used to signify its full import.

To sum up, which is the proper view? The Calcutta High Court in the Full Bench case, *Matungini Gupta* v. *Ram Rutton Roy*,[8] did not consider, as rightly commented upon by Mr. Justice Krishnan in his referring judgment in *Vitta Tayaramma* v. *Chatakondu Sivayya*,[9] the scope and the object of Act XV of 1856. The learned Chief Justice merely says: "S. 2 includes all widows who are within the scope of the Act, that is to say, all persons who being Hindus become widows." The Allahabad High Court expresses the correct position. In *Vitta Tayaramma* v. *Chatakondu Sivayya*[9] it was held by Sir John Wallis, C.J., "The words 'any widow, ... upon her re-marriage' in section 2 of Act XV are wide enough to cover the case of any widow of a Hindu re-marrying, whether or not her marriage would otherwise be prohibited by any custom or interpretation of Hindu Law and whether the re-marriage was to a Hindu or to a member of another religion." This was also the view of the referring Judge Phillips, J. But it was not the prevailing opinion of the Full Bench. The correct view as also the opinion of the Full Bench is expressed by Mr. Justice Seshagiri Aiyar in the following language: "The belief that a Hindu widow adds insult to injury to the memory of her deceased husband by apostacy first and by subsequent marriage with a person belonging to a different faith, is not a ground for reading into section 2 of Act XV of 1856 words which are not to be found there. The Act was intended to give relief to certain class of people and not to penalise others, and Courts are not at liberty to supply a defect of this kind by direct legislation." This view must receive strength from the following

8. (1891) I.L.R. 19 C. 289 (F.B.).
9. (1918) I.L.R. 41 M. 1078: 35 M.L.J. 317 (F.B.).
21. *Vide* Ss. 107 and 108, Indian Evidence Act (I of 1872).

observation of Lord Herschel: "The proper course of interpreting an Act, intended to codify a particular branch of the law is first to examine its language for its natural meaning uninfluenced by any considerations of the previous state of the law, and not to start with an inquiry as to how the law previously stood."

In this state of the law with such a diversity of judicial opinion in India, the labours of jurists in codifying certain portions of Hindu Law and in granting large concessions to the convert and to the widow by legislative measures like Acts XXI of 1850 and XV of 1856, must remain unfulfilled. It cannot be said with authority that her title to property can remain unchallenged unless this question receives strength from the Privy Council.

M. VAIKUNTHA RAO, B.A., B.L.
VAKIL, MASULIPATAM.

SUMMARY OF ENGLISH CASES.

JONESCO *v.* BEARD, (1930) A.C. 298.

Practice—Judgment obtained by fraud—Procedure for setting it aside—Appeal or new trial.

The trial Judge considered the evidence and decided all the issues against the plaintiff and consequently dismissed the action. The defendant appealed against it on the ground that the trial was tainted with fraud. The appellate Judge set aside the judgment and ordered a new trial accepting the allegations of fraud.

Held, that the course taken was, as a mere matter of procedure, irregular. The proper method of impleaching a completed judgment on the ground of fraud is by a new action setting out with exactness the particulars of fraud, though in special cases the court has jurisdiction to set aside a judgment for fraud on a motion for a new trial.

Hip Foong v. *H. Neotia & Co.,* (1918) A.C. 888, referred to.

CLAYTON *v.* CLAYTON, (1930) 2 Ch. 12.

Title deeds—Custody of—Will—Settled legacies—Appointment of new trustees—Owner of freehold—If entitled to custody from trustees of title deeds.

The plaintiff who, in the events that happened, became the absolute owner of freehold estates, claimed a declaration that he was entitled to three indentures, being appointments of new trustees of the will of the plaintiff's grandfather. Some of the trusts were still on foot.

Held, that the right of an owner of land to the title deeds is not absolute and without exception. It is true that the immediate freeholder has both in law and in equity a *prima facie* title to the possession of the title deeds, but where the trustees have yet duties as trustees to perform, their deeds of appointment are legitimately with them and the freeholder cannot recover them as his title deeds.

In re SIMMS, (1930) 2 Ch. 22.

Bankruptcy—Fraudulent transfer—Delaying creditors— Bona fides *of debtor if material—Bankruptcy Act,* 1914, *Ss.* 1 (1) (*b*) *and* 45.

A transfer by a debtor of substantially the whole of his property, whether by way of charge or by way of sale, will be an act of bankruptcy, if the necessary consequence of the transfer will be to defeat or delay his creditors.

Where in the place of a going business and substantial business assets, shares of a private company which had taken over the debtor's assets and liabilities together with a right of action by the debtor against that company on its covenant to discharge his liabilities were substituted,

Held, that the arrangement must necessarily delay creditors and that the sale effected in pursuance of the same was a fraudulent transfer.

Held, further, that the fraudulent character of the transaction was not modified by the parties having been under the *bona fide* belief that it was the best thing for the creditors.

Case-law discussed.

In re COLLIER, (1930) 2 Ch. 37.

Will—Construction—Insurance policy made payable to wife on her surviving insured—Death of wife before husband —Insolvency of insured—Insurance money if divisible among creditors.

In 1876 *C* took out a life insurance policy for the benefit of his wife then living. In 1918 *C's* wife died intestate and

C died in 1929 without having married again. C had been adjudged bankrupt in 1891.

Held, that the policy moneys, payable on the death of the insured, formed part of his property so as to vest in the trustee and be divisible among his creditors.

In re *Browne's Policy,* (1903) 1 Ch. 188, relied on.

In re THE COLISEUM (BARROW), LTD., (1930) 2 Ch. 44.

Limitation—Acknowledgment—Company's balance-sheets showing fees due to directors—Effect—Lord Tenterden's Act, 1856, *Ss.* 1 (1) (*b*) *and* 45—*Companies Act,* 1908, *S.* 113.

An acknowledgment will keep a debt alive only if it amounts to a fresh promise to pay and if it is made to the creditor or his agent. Where the directors of a company at various board meetings held from time to time passed the balance-sheets before them and two of them signed the balance-sheets on behalf of the board pursuant to S. 113 of the Companies Act,

Held, that the promise to pay being to the directors themselves, the entries in the balance-sheets did not amount to acknowledgments in writing within the meaning of Lord Tenterden's Act.

Held, further, that the resolution of the board of directors sanctioning the fees due to them was not binding on the company.

Per *Maugham, J.*—Had the statement been made in the balance-sheet that the company owed a specific sum to a shareholder, to whom the balance-sheet was sent in the usual way, that would have amounted to a sufficient acknowledgment.

In re BOLTON: *Ex parte* NORTH BRITISH ARTIFICIAL SILK, LTD., (1930) 2 Ch. 48.

Company—Allotment of shares—Failure to pay call moneys—Forfeiture and re-allotment of shares—Bankruptcy of original allottee—Right of company to prove damages—Payments by new allottee as mitigating damages.

Where after the allotment of shares in a company the allottee was adjudged bankrupt and the shares having been forfeited for non-payment of calls were re-allotted to another person and the company sought to recover damages from the original allottee,

Held, that the company was entitled to prove in insolvency to the extent of the actual damage sustained by them. In such a case the payment by the new allottee enured for the benefit of the original allottee and released him *pro tanto* in respect of the damages.

In re *Randt Gold Mining Co.,* (1904) 2 Ch. 468, relied on.

In re LOUCH, (1930) 2 Ch. 63.

Practice—Bill of costs—Taxation by master—Later application for general increase—Sustainability—Supreme Court Rules, O. 45, R. 10-B.

R. 10-B of O. 45 of the Supreme Court Rules provides that a certain percentage of increase "shall be allowed" on the bill of costs. After a bill had been taxed, a solicitor, who had omitted to claim the increase, applied for its addition. The same was objected to on the ground that the application was one to alter a bill which had become final.

Held, that the taxing master was bound to allow the increase.

In re THOMAS'S WILL TRUSTS: POWELL *v.* THOMAS, (1930) 2 Ch. 67.

Will—Conditional gift—Fulfilment of condition impossible—Gift takes effect.

Where the condition precedent to a gift taking effect is impossible by law at the time the testator makes his will, the gift will take effect notwithstanding the condition.

In re ROBERTSON: COLIN *v.* CHAMBERLIN, (1930) 2 Ch. 71.

Cypres *doctrine—Bequest of residuary estate for charitable purposes—Legacy found to be more than sufficient—Mode of applying surplus.*

Where a testatrix bequeathed her residuary estate towards the restoration or maintenance of a named church and it appeared that the sum of money available was more than sufficient for the charitable purposes,

Held, that the surplus did not go to the next of kin but should be applied *cypres.*

In re *King,* (1923) 1 Ch. 243, followed.

In re, SCHOALES: SCHOALES *v.* SCHOALES, (1930) 2 Ch. 75.

Charity—Bequest to Roman Catholic Church—Validity.

A testatrix by her will bequeathed her entire property "to the Roman Catholic Church for the use thereof."

Held, that there was a valid charitable bequest.

Dictum of Romer, J., in In re, *Barnes,* (1930) 2 Ch. 80, followed.

In re, BOWER: BOWER *v.* MERCER, (1930) 2 Ch. 82.

Will—Special power—Exercise by testatrix in favour of husband—Testatrix subsequently acquiring other legacy with fresh power—Death of testatrix without exercising new power—Effect.

If a testator dies after the lapse of some time from the date of the execution of the will, the testamentary disposition cannot be treated as having been executed immediately before death.

Where the testatrix by her will directed that the income of the estate which she had or might acquire in future should be paid to her husband, and her father subsequently gave her a legacy with a power of appointment, but she died without exercising that power,

Held, that the husband was not entitled to the estate conferred by the father on the testatrix.

FUEL ECONOMY CO., LTD. *v.* MURRAY, (1930) 2 Ch. 93 (C.A.).

Estoppel—Licensor and licensee—Suit relating to matters outside license—Applicability of rule of estoppel.

The rule that a licensee cannot attack the validity of a patent which is the subject of a license is applicable only in cases where the licensee is sued as such. Where the license was restricted to a particular locality and the holder of the patent sued the licensee for infringement of the license in having sold the articles outside the area,

Held, that the validity of the patent can be disputed by the defendants.

PILKINGTON *v.* UNITED RAILWAYS OF THE HAVANA AND REGLA WAREHOUSES, (1930) 2 Ch. 108.

Company—Power to issue share warrants in respect of stock—Companies Act, 1929.

Under the Companies Act, 1929, a company has the power to issue share warrants in respect of stock.

SAGAR *v.* H. RIDEHALGH & SON, LTD., (1930) 2 Ch. 117.

Custom—Master and servant—Deduction in wages for bad work—Validity and proof of usage.

The plaintiff, who was an employee in one of the Lancashire Cotton Mills, sued to recover from his employer a sum of money which the latter had illegally deducted from his wages. The defendants pleaded that the deduction was for bad work and relied on a usage in the Cotton Mills permitting the deduction. The evidence showed, however, that the practice varied in the several mills.

Held, by Farwell, J., that the alleged usage was neither reasonable nor certain, because it depended on the will of the master, and the plaintiff was consequently entitled to recover the deduction in wages.

In re, GARRETT, (1930) 2 Ch. 137.

Bankruptcy—Pension of bankrupt not vesting in trustee —Power of Court to direct pension to be utilised for payment of debts—Pensions Act, 1921, *S.* 14*—Bankruptcy Act,* 1908, *S.* 31.

The Police Pensions Act, 1921, S. 14, provides that the pension due to a police officer does not vest in the trustee in bankruptcy. S. 51 of the Bankruptcy Act, however, provides that the whole or part of a bankrupt's pension may be directed to be paid to the trustee for the benefit of the bankrupt's creditors.

Held, on a consideration of both the sections, that, though the pension did not vest in the trustee so as to enure for the benefit of creditors in every case, there was nothing to prevent the court from making an order under S. 51 in favour of the creditors.

In re, STRATTON: STRATTON *v.* ATTORNEY-GENERAL, (1930) 2 Ch. 151.

Will—Bequest to charitable objects—Gift on trust to Vicar "to be distributed among parochial institutions or purposes"—Validity.

Where a testatrix bequeathed certain sums of money in trust to the Vicar for the time being of a certain parish "to be

by him distributed at his discretion among such parochial institutions or purposes as he shall select,"

Held, that the gift was invalid as the objects named included objects which were not charitable.

TAYLOR *v.* TWINBERROW, (1930) 2 K.B. 16.

Limitation—Landlord and Tenant—Tenancy from year to year—Sub-tenancy—Sub-tenant prescribing for yearly tenancy—Subsequent merger of freehold in yearly tenant—Action for possession against sub-tenant by tenant after merger—If notice should be given.

By a lease in 1900 *F* granted a tenancy from year to year of a freehold to *T* at an annual rent. *H* put his brother-in-law *T* who was then his foreman in possession rent free, *H* himself paying rents, etc. *T* continued in possession even after he ceased to be his foreman. In 1919 *H* purchased the freehold reversion of the property and an action having been filed in 1929 for possession by *H's* personal representative against *T's* widow,

Held, that *T* must be deemed to be in possession of the property not as the guest of *H,* but as a tenant-at-will, that as even after the foremanship ceased *T* continued in possession for over the statutory period the right of *H* to dispossess *T* had become extinguished in 1913, but the right of the freehold reversioner to dispossess him on the termination of *H's* yearly tenancy was not affected by such extinction. By *H* buying the freehold reversion, his yearly tenancy merged in the reversion and was thereby determined and as a result of it *T's* rights against all except the freeholder also terminated and a new tenancy-at-will, which can be put an end to by a week's notice, was created.

Tichborne v. *Weir,* (1892) 67 L.T. 735, followed.

Walter v. *Yalden,* (1902) 2 K.B. 304, distinguished.

Per Scrutton, L.J.—The passage in Darby and Bosanquet's Statutes of Limitations, 2nd Ed., p. 493: "It has been said ... .to eject him," approved and the passage at p. 494 suggesting that the person taking the benefit of the statute does acquire a title commensurate to the title lost disapproved as inconsistent with the passage at p. 493.

REX *v.* DIVINE WALTON, *Ex parte,* (1930) 2 K.B. 29.

Inquest—Duties of Coroner—Interference by Court with Coroner's verdict—When allowed—Procedure at inquest to be strictly legal.

The Coroner held an inquest over the bodies of two men who had been killed in a collision in a public road in or near the city of Hull and in so doing empanelled a jury of 11 men selected out of a list or panel of 16 or 17 for the city. He viewed the damaged vehicle before the inquest with a man who subsequently acted as foreman of the jury and during the inquest when the jury inspected the locality, the Coroner himself joined them and also allowed a police constable to speak and point things to the jury.

Held, that the Court may order a fresh inquest to be held under S. 6, sub-section (1) of the Coroner's Act, 1887, if satisfied that "by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry or otherwise, it is necessary or desirable that in the interest of justice, another inquest should be held." The Court is not to attend to mere informalities nor to criticise minutely the summing up or the nature of the evidence or of the procedure but it must be so conducted that no room is given for a feeling that justice has not been done and the public have a right to expect that the verdict is given upon the sworn evidence heard at the inquest and upon nothing else. It is improper to have a small panel of regular jurymen to select the jurors from and is contrary to the principle of the jury system which is the determination of questions of fact by persons taken at haphazard from the general body of qualified persons. It is also contrary to public policy that a Coroner should take, before an inquest is held, one or more persons who are to serve on the jury and privately investigate with them any of the facts of the case and this whether or not it can be shown that there was anything in the nature of discussion. There is nothing wrong in the Coroner going with the jury to inspect, but he should carefully abstain from any discussion with them. It is improper for the constable to give information to the jury outside the Court and that itself can be a ground for quashing the inquisitions.

NEAR EAST RELIEF *v.* KING, CHASSEUR AND CO., LTD., (1930) 2 K.B. 40.

Insurance—Broker's lien—Policy parted with but possession again resumed—Immediate employer of broker only an agent—Knowledge of agency acquired by broker after effecting policy but before resumption of possession—Lien if lost—Marine Insurance Act, 1908, *S.* 53, *sub-section* (2).

An agent of the plaintiffs effected a marine insurance through the defendants who were insurance brokers. The

policy was in the name of the defendants. The goods having been lost, the plaintiffs called for the policy from the defendants, who claimed a lien on it for balance due on account owing to them by their employer, who was the plaintiff's agent. By S. 53, sub-section (2), a broker who effects an insurance has, as against the assured, a lien on the policy for balances due on account and where he has dealt with the person employing him as a principal, he has also a lien on the policy in respect of any balance on insurance account due to him from such person, unless, when the debt was incurred, he had reason to believe that such person was only an agent.

Held, that generally a lien which is lost on parting with possession revives when possession is resumed, but that rule will not apply where the person claiming the lien voluntarily parts with possession of the policy and by the time he resumes possession he becomes aware or has reason to believe that his immediate employer is only an agent and not a principal. *Held* further, on the finding that when he got back the policy, the broker knew he was only dealing with an agent, that the defendants cannot claim any lien. In any case, the lien can only be claimed with regard to payments due to the broker before they became aware of the agency, though originally they did not know of it.

LYNN *v.* BAMBER, (1930) 2 K.B. 72.

Limitation—Sale of goods—Breach of warranty—Fraudulent representation—No concealment of fraud—Starting point.

In 1921 the plaintiff bought some plum trees warranted to be "Purple Pershore." After some years the plaintiff found they were "Coe's Late Red," an inferior plum, and in 1928 he brought an action for damages for breach of warranty.

Held, that since the Judicature Acts, the rule of equity has to be followed when it is at variance with the common law rule, and therefore even in a common law action active and fraudulent concealment on the part of the defendant is a good answer to the Statute of Limitation. It is not necessary for that purpose that there should be a fiduciary relation between the parties or any special contract. It is enough if there had been fraud unknown to the plaintiff, although there may be no active concealment by the defendant.

Case-law discussed.

LAWRENCE *v.* CASSEL, (1930) 2 K.B. 83.

Vendor and purchaser—Sale of immoveable property—Agreement to sell containing clause to complete house under

construction—Final conveyance silent about it—If the clause merges in the conveyance or can be collaterally enforced.

By an agreement to sell in writing, the defendant agreed to sell a plot of land and a dwelling-house thereon in course of erection and undertook to complete the said house construction on a proper manner. Later, he executed a regular conveyance of the property but the deed contained no reference to the building or to any work to be done by the defendant with regard to completing the house. The builder's work was badly done and in an action for breach of the agreement to properly construct the house, the vendor pleaded that by the conveyance the contract of sale was merged in the deed and the terms not repeated in it were no longer enforceable.

Held, that the contract to do the work was collateral to the contract for the sale of the house in the course of erection and being collateral had no place in the deed of conveyance and, therefore, did not merge on the execution of the deed of conveyance, which said nothing about the subject of the stipulation.

Palmer v. *Johnson,* (1884) 13 Q.B.D. 351; and

Saunders v. *Cockrill,* (1902) 87 L.T. 30, followed.

BANK OF RUSSIAN TRADE, LTD. *v.* BRITISH SCREEN PRODUCTIONS, LTD., (1930) 2 K.B. 90.

Practice—Interrogatories to company—Secretary answering "I do not know"—Duty of Secretary to enquire and answer.

B bank brought an action against the respondents on a number of acceptances of which *D* company were said to have been the drawers. The documents appeared to have been signed by two persons purporting to sign on behalf of *D* company. In view of the defence raised, it was necessary to prove that the documents were signed by the persons not as mere strangers but as agents in the employ of *D* company and that in so doing they were acting within the scope of their authority. To prove these steps, the *B* bank administered certain interrogatories on the defendants passed by the Master as proper. They were required to answer them "by their Secretary or other their proper officer to the best of his knowledge, information and belief." The Secretary to the defendants replied to all saying "I do not know."

Held, that it is not sufficient for a secretary of a company answering as the mouthpiece of a company to merely search his own mind and say he knows nothing. He is not bound to give information which he did not acquire in the course of his

employment but he is bound to institute proper enquiries of the other officers and agents of the company with regard to their knowledge, also acquired in the course of their employment and give the proper answer as gathered from such enquiries. He is not bound to institute a roving enquiry among all available sources of information for the purpose of enabling the other party to make out a case. He is bound to answer according to information and belief, which is not the same thing as to answer according to knowledge.

MOURTON *v.* POULTER, (1930) 2 K.B. 183.

Negligence—Contractor felling tree without warning children near by—Accident to child—Child as trespasser—Liability of contractor.

The proprietor of a piece of land adjacent to a high road and unfenced entered into a contract with a contractor to fell a tree on his land. The assistants of the contractor drove the children playing near by twice, but just when the tree was being held by one root and the contractor knew it would fall in two minutes, he failed to drive the children away, with the result the tree fell and injured three children.

Held, that the defendant owed a duty to the children, even though they were trespassers, to warn them that the tree was going to fall, and by his failure to warn them, he was guilty of negligence and liable for the damages.

Excelsior Wire Rope Co. v. *Callan and others,* (1930) A. C. 404, followed.

Addie (Robert) & Sons (Collieries), Ltd. v. *Dumbreck,* (1929) A.C. 358, distinguished.

Scrutton, L.J.—"Where the land remains in the same state, a trespasser must take it as he finds it, and the owner is not bound to warn him. That, however, is a different case from the case in which a man does something which makes a change in the condition of the land, as where he starts a wheel, fells a tree, or sets off a blast when he knows that people are standing near. In each of these cases he owes a duty to these people even though they are trespassers to take care to give them warning.".

In re, WITHERS AND COMPANY, (1930) 2 K.B. 192.

Appeal—Application for delivery of bill of costs in criminal proceeding—No action pending—Order by Judge—Appeal whether to Divisional Court or Court of Appeal.

A firm of solicitors acted for a client in certain criminal proceedings in which he was defendant in 1925-26. The solicitors delivered a bill of costs in summary form to the client's attorney who also paid the bill. Later, the client took out an originating summons for a detailed bill. The Master ordered it but the Judge reversed the order. The client preferred an appeal to the Court of Appeal.

Held, that by the Judicature Act, 1894, in appeals from chambers, only appeals in matters of "practice and procedure" lie to the Court of Appeal, the others going to the Divisional Court. The question of a bill of costs is a substantive right under the Solicitors Act, the client having a right to delivery of detailed bill of costs in certain cases and having no such right in others and not a question of practice and procedure and, therefore, the appeal lay only to the Divisional Court.

Per Greer, L.J.—"One would think that decisions as to matters of practice and procedure are those given in the course of legal proceedings to get a final result....... It may be that where a bill of costs is to be delivered in relation to a civil action in which judgment has been given, the action is still in existence for the purpose of dealing with any interlocutory matters not disposed of."

In the Estate of DINSHAW, (1930) P. 180.

Probate—Practice—Power of attorney by two joint executors—Attorney granted administration with will and codicils annexed—Death of one executor—Effect on grant of letters to attorney—Revocation of grant and fresh grant—Validity.

A testator in India, who had property in England, nominated by his will four persons to be his executors. Two of them died and the remaining two jointly executed a power-of-attorney in favour of *A*—their solicitor—to apply for and obtain letters of administration in the High Court of England. *A* was duly granted the letters and while still some of the testator's real property was undisposed of, one of the executors died and the other effectually revoked the grant to *A*.

Held, that except for acts done before the revocation, all the powers under the letters granted to *A* have gone. The form of the order should be "that the Court taking notice of the revocation by *F* (surviving executor) of the power granted to *A*, the administrator *pro tempore,* who was administrator for *F* and his co-executor jointly, the grant of that administration on behalf of the two executors should be revoked,

that is, it should be brought in to be cancelled." The old grant thereby goes and the surviving executor is free to appoint his own attorney to take out administration on his behalf.

PALIN *v.* PONTING, (1930) P. 185.

Will—Printed form—First page duly executed—First page referring to second page for completion—Second page containing dispositions, not executed—Effect—Attesting witnesses absent—Affidavit by them in prior application for probate if can be relied upon.

A testatrix made a will on a printed form. The first page of the form contained testamentary dispositions and was duly executed and attested. As there was no room for further writing on the page, the will was continued on the second page, the first page containing the reference "*see* other side for completion." The second page was not executed or attested. The attesting witnesses could not be found nor could their handwriting be proved. One of them had, in a previous application for probate, made an affidavit in common form wherein he had deposed to the effect that the reference "*see* the other side for completion" and the words on the second page were written before execution.

Held, that the whole will can be admitted to probate. What is written on the form is all part of one will. By the reference in the duly executed portion to the other side the testator intended to include it as part of her will and the words on the other side had become just as much a part of the will as if they had been interlined in the body of the will. The affidavit of the witness whose evidence could not be had is also admissible as evidence of execution and the state of the will when he attested.

RESTALL *v.* RESTALL, (1930) P. 189.

Divorce—Marriage declared null and void—Petition for permanent maintenance—Matters to be considered—Conduct before and after marriage, if relevant—Judicature (Consolidation) Act, 1925, *S.* 190, *sub-section* (1).

The wife obtained an order absolute declaring her marriage with the respondent null and void on the ground of consanguinity of the parties and then petitioned the Court for permanent maintenance under S. 190, sub-section (1) of the Judi-

cature (Consolidation) Act, 1925. The respondent filed a counter-affidavit making serious allegations of misconduct on the wife's part not only after her marriage with him but even before. The Registrar ordered the allegations as to misconduct to be struck out and it was confirmed by the Judge.

Held, on appeal, that in awarding maintenance under S. 190, the Court is to have regard "to her fortune, if any, to the ability of her husband and to the *conduct of the parties.*" The "conduct" referred to in the section includes conduct both before and after the marriage and, therefore, the allegations in the affidavit are all relevant in arriving at a conclusion as to the maintenance payable.

Wood v. *Wood*, (1891) P. 272, and *Kettlewell* v. *Kettlewell*, (1898) P. 138, followed.

JOTTINGS AND CUTTINGS.

Too Many Briefs.—Solicitors, according to reports current in the Temple, show no abatement of their old desire to retain the professional services of Sir John Simon. He is in greater demand than ever. But the demand is now in excess of the supply, and it is stated that three good briefs were returned from Sir John's Chambers in the course of a single week. Inferences are drawn from this information on the assumption of its accuracy; and one is that our most prominent member of the Common Law Bar will not undertake work that he cannot personally do. A sound practice more honoured in the breach than the observance by many of our most illustrious judges in the days when they were busy at and within the Bar.

Many men, especially in these days when the King's Bench activities are so partial and intermittent, would take a chance that the hearings would not clash. But may be Sir John has now decided to adopt the principle of a fair term's remuneration for a fair term's work, and to leave the rest for distribution amongst his more needy comrades of the Bar. If this be so, praise and thanksgiving are his due, and praise and thanks he will receive.

Meanwhile the storm continues to rage around the India Report which bears his name. In India it has raised a loud yell of disapproval; but a taste for it may well be acquired, and in time it may become the staple diet of the East.—*L.J.*, 1930, p. 42.

A Universal Lawyer Emerges.—I have received a printed pamphlet purporting to be signed by Andreas Marosi of Vienna, which fills one with amazement at the accomplishments of that apparently remarkable man. Most lawyers try to acquire a knowledge of one branch of the municipal law of one country, and lamentably fail. But Andreas Marosi can give sound advice on most of the laws of all the nations. "Sir," writes he, "I beg to call your attention to my international office in Vienna established for the purpose of rendering to lawyers of different States useful services in all cases in which the law of their respective countries don't afford sufficient means of solving law cases pertaining to the province of personal law, such as contraction, or dissolution of marriages, adoptation and naturalisation in a manner answering the purpose of the parties."

"For the sake of illustrating the present state of things," he especially refers "to the disgressions in the rules of law with respect to causes for divorce," and all his illustrations are indeed of "adultery," divorce and his willingness to solve a problem "in a manner answering the purpose of the parties."

He is willing to meet me and my need "in any place, say Paris or even London." "Rendering the rules of law of different countries concordant for the purpose of a practical enforcement of the same" forms the basis of his office, supplying thus a need hitherto sorely felt.

Is there anywhere in the world another lawyer like Andreas, so ready to supply so felt a need?—*L.J.*, 1930, p. 42.

Christian Marriage in India.—Lord Merrivale had an important point in marriage law before him recently when he gave judgment in the cross petitions in *Peal* v. *Peal* (*Times,* July 8). The parties to the marriage, which took place in India in 1921, were nephew and aunt. Both were Roman Catholics, but had obtained from their church the official dispensation which did, if it could, remove the bar of consanguinity. Both of them were also British subjects, and though there was some doubt as to their domicil at the time of the ceremony, the President assumed it to be Anglo-Indian. The husband's English domicil, which alone gave the Divorce Court jurisdiction, was acquired in 1922. The vital question was whether the Indian Christian Marriage Acts confer upon Christians domiciled in India the right to marry within the degrees prohibited by British law, provided they be of the Roman Catholics, and obtain the dispensation which the Canon law permits. The President de-

cided that those Acts do not grant that right. He founded his decision on the fact of the nationality of the spouses, and on a provision of the Indian Christian Marriage Act of 1872 which declares that nothing therein enacted should validate a marriage which the *personal* law of the parties forbids them to contract. It seems to be implicit in this interesting decision that nationality (at all events if it be British) has something to say in determining capacity to marry. Most lawyers have learned to say, and advise, that that capacity depends upon domicil or nationality according as either is regarded in this or that country as the fountain of personal law; and that in England it is a question to be decided by domicil. In the present case, the spouses were of Anglo-Indian domicil, and, if their original domicil was sought out, it was British. But the decision, with its strong emphasis on the nationality of the spouses, seems to show that British subjects, as such, are under certain rules as to marriage capacity which no domiciliary law can override.—*L.J.*, 1930, p. 73.

What the Mace owes to Mr. Beckett.—One good result of the incident is that the present House of Commons knows more about the Mace than they had ever done. M.P.'s have heard from Mr. Beckett that the Mace has no Magic. To unauthorised persons it is not *malum in se* but *malum quia prohibitum.* They know now that its value is symbolic and useful, and knowing its uses they realise, as Mr. Beckett himself does, that to abuse it is unprofitable. For example, one knows at a glance, either by the Speaker's wig or the position of the Mace, whether the House is in full session or merely in Committee; the Thing is under the Table if the House is not at its fullest and best; *aliter* if it is on the Table.

The advantage, to members entering the House of being able to see by reference to the position of a sizable object like the Mace, what the state of the House is or what is required of them in the way of demeanour, must be obvious to all.

And it is safe to say that as a direct result of Mr. Beckett's Parliamentary misdemeanour, the Mace has never stood so high in the affection and esteem of the faithful Commons as it does to-day.—*L.J.*, 1930, p. 93.

Offences without the Realm.—An interesting letter from Sir John Fischer Williams appeared in *The Times* this week (August 13), in which he dealt with the claim by the Soviet Government to try foreigners for offences committed outside

its territory. The learned writer pointed out that the claim is not without precedent in the criminal codes of other countries, and specified Turkey and Italy as cases in point. Moreover, several Judges of the Permanent Court of International Justice approved the claim by *dicta* delivered in the Turkish case of the *Lotus*. There is sanction for it in our own criminal code. It is true that, at common law, the jurisdiction of the Courts is territorial, not personal; and the rule is so stated with correctness in the indispensable "Archbold" (1927, at p. 28), citing the authority of *Macleod* v. *Attorney-General for New South Wales* (1891, A.C. 455, 60 L.J. (P.C.) 55). But there are many statutory exceptions to the rule, which may be discovered by the student in the course of a day's research. As to treason—to take the first instance—it can never be doubted that a British subject, at all events, may be tried within the realm for adhering to the King's enemies by acts done without it. Any doubt which may have existed on the point was set at rest by the historic judgment in *Rex* v. *Casement* (1917, 1 K.B. 98; 86 L.J. (K.B.) 467). The one thing which appears to be essential in such cases is that the offender should be present at the trial and have the right to cross-examine those whose testimony supports the charge.—*L.J.*, 1930, p. 102.

The Cost of Litigation.—As we noted at the time (*ante* p. 17), the Lord Chancellor intimated at the recent Mansion House Banquet to the Judges that he was considering appointing a committee to consider the question of the cost of litigation, which was brought into prominence by the Report of the Parliamentary and Commercial Law Committee of the London Chamber of Commerce. It was announced recently that Lord Sankey would receive, after the Long Vacation, a deputation from that Chamber on the subject; and it may be assumed that he will then be able to indicate more precisely what he has in mind. In the meantime, the topic of the cost of litigation is being canvassed in various papers; and, as might be expected, some of the contributions are better informed than others. Two articles by well-known members of the Bar, which deserve careful consideration, have recently appeared; the first, "The Curse of Trial by Jury" in the *Quarterly Review* for July, and is from the pen of Mr. Claud Mullins, and the other by Mr. Alfred Fellows, appeared in the *Daily Telegraph* of August 1. Mr. Mullins' paper is a wholly admirable one; his main point is that our rules of evidence—which are admittedly largely responsible for the cost of legal proceedings—are "the

child of the jury system," and that so long as the standard for all litigation is that of trial by jury, there will be no cheaper justice. It follows in his view, and we are largely in agreement with him, that cheaper litigation so far as common law matters are concerned, will involve a restriction of the right to trial by jury in civil cases. At present the rules of evidence are the same whether a case is being tried with a jury or by a judge alone; but it is obvious that it would be possible to dispense with some of the strictness of proof at present insisted on if the case were being dealt with by a trained legal mind alone. Mr. Fellows' practical suggestion for reducing the cost of litigation is that trustees should be entitled to rely on an opinion of counsel as to the construction of a document, instead of having to take the opinion of the Court. This is a comparatively minor matter, and we doubt if the suggestion would be found to be satisfactory.—*L.J.*, 1930, p. 102.

School and Office Training.—Mr. Reed finds the justification for the scientific teaching of law in the complexity which modern conditions have produced. "The ideal preparation," he says, "for any occupation, when applicable, is the apprenticeship method—participation under supervision in the actual activities of the craft. Whenever this method is approprite, any elaborate apparatus for theoretical instruction is a waste of time." And the law was at one time so simple that "this was a suitable and satisfactory method of preparing young men to enter the legal profession." But that time has passed, and the law of the present day is so complex, "that large portions of it, in order to be mastered by the student, must be presented to him systematically, instead of being left to be picked up in the haphazard way that formerly sufficed." And so the student has to be prepared by book-learning, leaving practical knowledge to be acquired by such devices as moots and the case method, or better, by actual work in the office. There is no doubt much to be said for this view, especially in America, with its forty-eight independent systems of State law. In this variety, the grasp of principle which the systematic study of the law provides forms a necessary help to the lawyer. But perhaps the desire to raise the standard of legal practice is a still stronger reason for the spread of the Law School. And with this desire is linked Mr. Reed's other subject—ethical standards. Many attempts, it seems, are being made in the States to exclude from the profession men who are unworthy of it, but it is a difficult task to find any test which does not degenerate into

a mere form. "It is impossible," he says, "to be certain how a young man or woman will react to temptation before the temptation occurs." It is the old theme that "cloistered virtue" is a poor asset. Over here it is proposed to tackle an important part of the same problem by separate accounts and annual audits, but in actual life character is discovered and tells without these adventitious aids. Mr. Reed's *Review of Legal Education,* with its discussion of how a practical direction can be given to legal study, should be of great interest to teachers of law.—*L.J.*, 1930, p. 116.

The Custody of a Child.—On Tuesday last the Court of Appeal dismissed an appeal in *Re Carroll* from an order of Mr. Justice Charles refusing a *habeas corpus* to bring up the body of Joan Margaret Carroll, an infant. The applicant for the writ was the child's mother. The child was illegitimate and had been born in April of last year at Warkworth House, Isleworth, an infirmary under the Middlesex County Council. Soon after the birth, the mother, who was a Roman Catholic, had transferred the custody of the infant to the respondents, the Homeless Children's Aid and Adoption Society, etc. (Incorporated), a Protestant rescue society, and had signed a consent to adoption by a Protestant couple under the Adoption of Children Act, 1926. The adopters, to whom the child was handed over last December, had intended to complete the process of adoption under the Act, but had received a letter from the Roman Catholic Chaplain to Warkworth House saying that Joan Margaret had been baptised by a Roman Catholic priest and that they were trying to find a Roman Catholic home for her. In the course of his judgment, the Lord Chief Justice (Lord Hewart), referred to *Barnardo* v. *McHugh* (1891) and to the Guardianship of Infants Act, 1925, which expressly laid down that "where in any proceeding . . . . the custody or upbringing of an infant . . . is in question, the Court . . . shall regard the welfare of the infant as the first and paramount consideration," and he remarked that between 1891 and 1926 there seemed to have been a certain development of thought in such matters, though probably the mere wish of a parent of an illegitimate child would at no period have been allowed to supersede the real interest of the child. In the case of a girl his Lordship felt that the care and affection of a private home would be better than the control of any institution, especially as in the latter case the care and control would stop at an earlier age. Although the mother's wishes with regard to religion

deserved consideration, he did not feel the welfare of the child would be served by handing her over to institutional care, however excellent. With regard to a parent's right as to a child's religion it was said that the mother, when applying to the Society, had forgotten this important matter; and as she later applied that her boy aged five should be put on the Protestant society's list for adoption or admission into one of their homes, counsel's view that she did not care two straws in which form her daughter was brought up seems to have been fully justified. The adopters had become fond of the child, and the decision in favour of home life as against institutional life seems to have been a thoroughly wise one.—*L.T.*, 1930, p. 67.

Juvenile Offenders.—The House of Commons on Tuesday of this week gave a first reading to a Bill brought in by Mr. Rhys Davies and supported by Lady Astor, Sir John Withers, and others, the object of which is to amend the law on the above subject in several respects. Its contents will be discussed in these columns at a later date; meantime, however, it should be noted that this Bill, in addition to several amendments of detail, makes such far-reaching proposals as the abolition of the death penalty up to eighteen years of age, the raising of the age of criminal responsibility from seven to eight years of age, and the raising of the age limit for Juvenile Courts from sixteen to seventeen. One other interesting proposal is to abolish the registration of convictions in respect of offences committed by children, on the ground that convictions for even trivial offences committed in early youth do, as the law now stands, follow the individual throughout his life.—*L.T.*, 1930, p. 68.

Income Tax Appeals.—On Thursday of last week Lord Dunedin, in the House of Lords, called attention to the practice of appeals in income-tax cases, and made some interesting suggestions on the subject. His Lordship referred to his own recent remarks, in the judicial business of the House, on the Crown's practice of coming to their Lordships on every occasion on which they lost, without regard to the importance of the case. We have already referred in these columns to his Lordship's remarks on this subject in the course of his judgments in the *Burma Corporation Case* (*ante*, p. 185) and *Jones* v. *Leeming* (*ante*, p. 254), and we noted with regard to the latter case that there had been "Judicial unanimity on the part of the trial Judges and the three Judges of the Court of Appeal," and that "the amount involved was only £130." On the present

occasion Lord Dunedin stated he had learnt that in the latter case the Crown had told the litigant they were prepared to pay his costs as between solicitor and client. Earlier, on the 25th March last, the same case was referred to specifically in questions asked in the House of Commons, and the Chancellor of the Exchequer, Mr. P. Snowden, in his reply, said the case—which had, it may be recalled, been referred to by their Lordships as "one of the simplest"—"was one in which the Board of Inland Revenue felt bound to seek an authoritative ruling from the highest tribunal on a point of income-tax law on which the guidance given by previous judicial decisions in other cases was uncertain," adding that "in accordance with their established practice in appeals of this type they undertook from the outset to pay the taxpayer's costs, whatever the event, both in the Court of Appeal and in the House of Lords." Sir W. Davison thereupon asked whether it was now clear that in future in all cases which, the law being in doubt, the Inland Revenue took to the highest court, the costs of the taxpayer would be reimbursed by the department, but the Chancellor replied that the hon. member must draw no such conclusion. —*L.T.*, 1930, p. 317.

Lord Dunedin's Suggestions.—In Lord Dunedin's opinion there was a perfectly easy remedy for the alleged abuse. His Lordship thought that when the Crown won in the Court of Appeal the taxpayer should go further only at his own risk, but that when the taxpayer won in that court the Crown should not be allowed to come to their Lordships' House except with the leave of the Court of Appeal, who should be given a discretion to clog their permission with conditions as to costs. The Court of Appeal could very well be trusted to give leave to appeal in all proper cases, *e.g.*, where judicial opinion on the case had been as nearly as possible divided, or, at any rate, not unanimous, or where, even though there had been unanimity, the question involved was of far-reaching importance. The Paymaster-General, Lord Arnold, stated that the Inland Revenue did not enter appeals from decisions given against them by the Court of Appeal or the Court of Session unless there was a large sum of money at stake, or an important point of principle in issue which would involve large sums in other cases, and in all cases where the board was seeking to establish some new point of principle in tax administration they paid the taxpayer's costs in any event. Lord Hailsham was unwilling that the Crown should in revenue cases have imposed on it a limitation to which no other litigant had to submit. The real remedy,

in his view, lay in a more rigid examination of cases by the Law Officers. When he was Attorney-General, before an appeal was entered by the board to their Lordships' House, there first had to be an opinion by the Treasury counsel and the counsel for the commissioners, and then the petition of appeal had to be signed in the usual way by two counsel, one of whom in a Crown case would always be the Law Officer who had argued it before the Court of Appeal. It had been his practice, and he doubted not that it was the normal practice of a Law Officer, before signing notice of appeal, further to consider the case, with which, of course, he was already familiar, and then to see the solicitor for the board and explain either that there should be no appeal, or, if there were one, that an undertaking should be given to pay costs, whichever way the appeal went. As Lord Arnold had pointed out, the Inland Revenue normally did that, at any rate, in cases in which they were seeking to decide some great point of principle where the actual stake was small. It seems to us that the matter should be regularised, and that the leave of the Court of Appeal should be required whenever the authorities wish to appeal without giving such an undertaking.—*L.T.*, 1930, p. 318.

Departmental Powers.—While the committee presided over by Lord Donoughmore is deliberating this thorny question, a concrete example of what is involved has been put before the public in the appeal in the case of *Rex* v. *Minister of Health; Ex parte Yaffe.* The case, which relates to a housing scheme of the Liverpool Corporation, touches the fundamentals of the difficulty, and we have little doubt that the Court of Appeal hearing is but a further stage in its journey to the House of Lords, whither the Crown were, indeed, invited by Lord Justice Scrutton to take it. The cardinal question is whether, as a result of a clause enacting that the order of the Minister, when made, shall have effect as if enacted in the Act, an order is of such effect that a scheme in the making of which statutory conditions have not been observed acquires, by virtue of the making of the order, full statutory authority and cannot be touched by *certiorari.* It may be remembered that, in discussing the case when before the court of first instance, we expressed the opinion that the dissenting judgment was the more correct, and that if any of the steps leading to the order had been omitted the Minister could not be said to have made an order under the all-powerful section. It is interesting to note that this is the unanimous judgment of the Court of Appeal, bringing the votes in its favour to four against two.

Should it ever become a habit with Government departments, as it well might, had the decision gone otherwise, to attach but secondary importance to the question whether they in fact possessed the powers they purported to exercise, then, indeed, there would be justification for attaching to them the opprobrious epithet of Star Chamber, which Lord Justice Scrutton affixed to clauses of the kind in question. The case of *Ex parte Yaffe* will, we feel, go down to history.—*L.T.*, 1930, p. 343.

Discretion in Divorce.—On Tuesday and Wednesday of last week, in the case of *Apted* v. *Apted and Bliss,* the principles governing the exercise of the court's discretion to grant relief where a petitioner has been guilty of adultery were reviewed by the Attorney-General on the instructions of the King's Proctor. In May of last year it was proved in that case that each of the parties to the marriage had been living in adultery, and the President (Lord Merrivale) adjourned the case in order to obtain assistance in considering the public interests involved in that and similar cases. The Attorney-General said that the fact that he had brought to bear on the subject "a fresh and untutored mind" had made him realise the judges' difficulties in such cases and the extreme gravity of the questions at issue. He referred to the rules to regulate the discretion which were laid down by Lord Penzance in *Morgan* v. *Morgan and Porter* (1869, 20 L.T. Rep. 588), and he described as prophetic a passage in the judgment in that case where Lord Penzance said: "A loose and unfettered discretion of this sort upon matters of such grave import is a dangerous weapon to entrust to any court, still more to a single judge." On reference to the case it will be found that Lord Penzance added, with regard to this discretion, that: "Its exercise is likely to be the refuge of vagueness in decision and the harbour of half-formed thought. Under cover of discretion, a conclusion is apt to be formed upon a general impression of facts too numerous and minute to be perfectly brought together and weighed, and sometimes not perfectly proved; while the result is apt to be coloured with the general prejudices, favourable or otherwise, to the person whose conduct is under review, which the course of the evidence has evoked. Upon such materials, so used, two minds will hardly ever form a judgment alike, and the same mind will often appear to others to form contradictory judgments on what seem to be similar facts. This invites public criticism and shakes public confidence in the justice of the tribunal."—*L.T.*, 1930, p. 363.

Expense of Litigation.—As a result of representations from members of the London Chamber of Commerce the Parliamentary and Commercial Law Committee of that body recently appointed a small but competent sub-committee of solicitors, accountants, and others, with Mr. E. G. Roscoe as chairman, to report on the present cost of litigation in this country. In their report just to hand the sub-committee state that their observations are intended to cover litigation, including both actions in the High Court and arbitrations, arising out of ordinary business relationships, but to take no note of divorce matters, libel and slander cases, and other more or less domestic or personal proceedings. Among the features of the present system which the report selects for criticism are the pleadings, frequently of considerable length, which have to be settled by counsel; the punctilious production of all documents; the numerous interlocutory proceedings, many of which are attended by counsel—the pace in this respect being often set by the richer litigant; the minute proof of all documents and facts by oral evidence in court; the automatic increase of a junior's fee with that of his leader; the expense of expert testimony; the cost of copies, and the present-day tendency of the courts to go into matters of detail at great length, and so prolong the duration of trials inordinately.—*L.T.*, 1930, p. 391.

Suggested Remedies.—The report admits that "the English procedure, like so many products of England, is, apart from cost, the most perfect of its kind in the world," but it characterises that procedure as an expensive luxury and beyond the means of people who are neither very poor nor very rich. The authors of the report think the present separation of the two sides of the legal profession should be ended, but they recognize that the time may not yet be ripe for fusion, and that they have to deal with what is immediately practicable. Coming to remedies for the present discontents, the report finds that the main cause of expense to litigants is the English law of evidence, and that the first method of cheapening litigation is to be found in the compulsory, and not merely optional simplification of proof. The recommendations under this head, put very shortly, are (*a*) That all documents should be accepted in evidence unless formally challenged; (*b*) that the evidence of witnesses be presented in the form of signed and attested statements; (*c*) that foreign evidence should always be given by affidavit or declaration; and (*d*) that in really technical matters an assessor should sit with the judge as an adviser, just as the Elder Brethren sit in Admiralty cases, and that expert

evidence should be only sparingly allowed. With regard to the fees paid to counsel, the views are expressed that the two-thirds rule should be abolished, but that the junior's fees for work done before trial should be increased. Against this it may, however, be urged that a heavy fee on a leader's brief is some evidence of the importance and difficulty of a case and the responsibility involved in the earlier work, and that a general raising of pre-trial fees would not cover this. Among other suggestions made are that proceedings before trial should be simplified; that only where important principles are involved should counsel's fees be allowed in interlocutory matters; that dates should always be fixed for trials; and that the management of the Law Courts should be entrusted to a business manager, who should be a responsible whole-time organiser such as "a solicitor who has had experience of organisation in the Army or a Government office." The framers of the report have, as they claim, endeavoured to go to the root of the matter, and as the questions discussed are not without interest to lawyers generally, we have given a brief summary of the suggestions which the sub-committee recommend "to the careful consideration of all business men, and also the Bench and legal profession."—*L.T.*, 1930, p. 391.

Land Registry Speed.—The report of the Chief Land Registrar, Mr. J. S. Stewart-Wallace, for the financial year 1929-30, shows that the past year has been one of record expansion marked by four outstanding features, namely: (*i*) An increase in the speed of all registrations; (*ii*) a record increase in voluntary registrations; (*iii*) a new fee order largely reducing the scale of fees; and (*iv*) new rules improving the practice of the registry. The Land Registry has been and is self-supporting, the estimated surplus of the fee income over expenditure for the year in question being £78,500. With regard to the speed of registrations, the average time for first registrations in London in 1929 was 7.4 days as against 9.3 in 1928, while the average time for dealings with registered land has been reduced from 6.8 days in 1928 to 4.8 days last year. In view of this greatly increased speed of first registrations the report notes a suggestion that the examination of title in the Registry may have been lightened to an undesirable extent. To rebut this suggestion the report points out that every title has on first registration been considered by a barrister or solicitor of an average standing of over twenty years; that points of doubt are referred to more senior officers, who, if necessary, consult the Chief Land Registrar, and that before a deci-

sion is come to in any case raising an important issue, the opinion of the Conveyancing Counsel to the Court or other expert is usually taken. In addition, through the system of indexing titles which have been examined, the Registry is often able to point out matters unknown to applicants for registration, and this possibility furnishes "one of the hidden advantages of registration" by allowing flaws in title so discovered to be rectified while all parties are living and available. Moreover, as the report points out, even were examinations imperfect and perfunctory, no risk would be incurred by registered holders by reason of the State indemnity. As regards the volume of work in compulsory and non-compulsory areas, the first registration of and dealings with registered land in 1929 together total 116,979 as against 110,600 during the previous year.—*L.T.*, 1930, p. 440.

The Debt Repudiating States.—The Council of Foreign Bondholders have issued a report as to international defaulters in payment of debt and interest. As might be expected, Russia overtops the rest. For what the defence is worth, the Government of Russia can plead both youth and poverty, and there is some suggestion of a counter-claim in respect of armed expeditions to overthrow the Soviet Government. Perhaps, when it is a little older and wiser, it will learn the value of common honesty. No such defence is available, however, for the second in the list of the defaulters, namely certain component parts of the United States. The unfortunate holders of bonds of the State of Mississippi and other defaulters who shelter under the Stars and Stripes may perhaps wonder why a family harbouring so many black sheep is so shocked at the Soviet's dishonesty that it declines to give the Russian Government official recognition. M. Stalin may plead, if he pleases, that the American repudiations had afforded him a valuable precedent. Incidentally, the Council also deal with the suggestion made on behalf of the defaulting States, that, after the lapse of so many years, the original holders of these bonds are dead, and their executors, administrators and assigns may be difficult to trace, and, any how, have got used to the loss of their capital and interest. The same argument would no doubt be available to the ordinary thief, if he had retained his swag for fifty years. The answer is, of course, that, whoever may be entitled to the money, the States which have obtained it on the false pretences of payment of interest and repayment of capital have no right to it. And so long as the repudiation exists the whole of the United States is tainted with the fraud, and the

accusation of dishonour cannot be met with a technical defence on the Constitution. Moreover, honour knows no Statute of Limitations, and exacts payment to the uttermost farthing.—*S.J.*, 1930, p. 253.

Pleadings.—Pleadings have been defined briefly by the late Mr. Blake Odgers as statements in writing delivered by each party alternately to his opponent stating what his contention will be at the trial, and giving all such details as his opponent needs to know in order to prepare his case in answer. By reason of their very nature, as above outlined, pleadings would appear to be a necessity inseparably associated with legal procedure; and it is not, therefore, surprising to find their original usage practically contemporaneous with the beginnings of our legal system. At first conducted orally, pleadings were, according to Mr. Blake Odgers, probably first drawn up on paper in the reign of Edward IV, but it was not until the passing of the Judicature Act, 1873, that the modern rules of pleading were formulated. Having regard to their venerable history and to the well-tested statutory provisions governing their use, it is not a little surprising to find a High Court Judge saying that "pleadings are often a mere farce and ought to be abolished" (Mr. Justice Wright in *Penney* v. *Photomaton Parent Corporation, Ltd.,* "The Times," 5th April). It is a little difficult to believe that his Lordship was expressing the opinion that all pleadings should be completely abolished, and his use of the word "often" would appear to support that belief. Pleadings in some form or another there must be, in order adequately to acquaint the court briefly with the matter in dispute, and in *Truth* of the 9th April a writer says: "Over thirty years ago a determined effort was made to do away with them, an attempt that failed completely, not only because of the innate conservatism of lawyers, but because of the appalling difficulty of preparing for trial without any idea what one's opponent's case may be. Compared with this the trouble and expense entailed in delivering pleadings is quite negligible." Unfortunately, in these days of comparative poverty the expense entailed in respect of pleadings merits and has received a good deal of consideration. Judicial notice of the matter was taken by Mr. Justice Hill in the case of *The Ciss,* which came before his Lordship on the 16th April, when he said that he thought that the parties in the case had acted very wisely in having merely typed and not printed pleadings. In his opinion it would be highly desirable in limitation actions, when there was no real

issue which would lead to a fight, for the pleadings to be typed and not printed. That would save expense. He did not like to give any general directions, but it was worth considering whether the whole of our system of dealing with the printing of pleadings did not need to be revised. The system of printing arose at a time when typewriting was unknown and when probably printing was cheaper than making a large number of longhand copies. Speaking for himself, he would raise no objection to typewriting instead of printing if it meant a saving of expense. If, in fact, however, pleadings were to be abolished, what would take their place? To state the case orally would be to revert to the original practice, and no doubt, in due course, a learned judge would request counsel to put a particularly intricate case in writing so that in the long run the modern pleading would evolve again. Better to profit by experience and retain what we have gained, provided that the profits of experience are not outrageous!—*S.J.*, 1930, p. 307.

A Tangled Web.—Mr. Justice Mackinnon commented to the Grand Jury at the Manchester Spring Assizes on a case of folly, rather than of criminality, as he put it. It beautifully illustrates the moral couplet addressed to Victorian youth: "Oh, what a tangled web we weave when first we practice to deceive!" A married man, said the judge, desired to live with a woman not his wife, and yet to give her the coveted marriage lines. An obliging brother went through the ceremony, signing the register, not with his own name, but with that of his married brother, then about to contract the irregular union. The latter wove another strand in the web by signing as his single brother. *Exeunt omnes,* all satisfied; the judge labels them as "incredible donkeys." Came the time when the single man wanted to take a real wife. He now stands charged with bigamy. Do the facts, if proved, constitute that offence? "Whosoever, being married, shall marry any other person during the life of the former husband or wife," commits bigamy, 24 and 25 Vic., c. 100, s. 57. It is obvious that the same word is used in two senses in the same sentence. "Married" means lawfully married, and the validity of the first marriage must be proved by the prosecution [*R.* v. *Kay* (1887) 16 Cox 292]. "Marry," in the second place in the sentence, must mean "go through a ceremony of marriage." Now, did the obliging brother "marry" the irregular second mate of the married man? One of the requisites of a valid marriage is "that the parties, understanding the nature of the contract, should freely consent to

marry one another" (Halsbury's "Laws of England," vol. xvi, para. 512). Here the parties did not consent to marry one another, and both were cognizant of a wilful misdescription done by the interchange of names between the brothers. We will not anticipate the decision of the court at the trial, but it may be the defence will be set up that the man charged with bigamy only went through an invalid performance with No. 1 wife, and therefore well and truly married No. 2. That is not bigamy.—*S.J.*, 1930, p. 307.

Wife's Legal Costs as "Necessaries."—As was said by Lord Justice Greer in the recent case of *H. S. Wright & Webb* v. *Annandale* (decided in the Court of Appeal on 5th inst.) "it is an undoubted principle of law that a wife living apart from her husband who is unwilling to maintain her has a right at common law to pledge his credit for necessaries, and, included in that term is the right to instruct a solicitor in proceedings taken by her against her husband or to defend proceedings taken against her by him." But as he proceeded to point out, there is a well-established exception to that rule, namely, where the wife has committed adultery. In "Lush on Husband and Wife," 3rd ed., pp. 394, 407, it is stated that "the wife's right to assume her husband's assent to her contracts for necessaries exists only where she continues chaste." In the case before the Court of Appeal it was strenuously argued that this states the law much too widely, and that it is only when the wife is "living in adultery" that her power to pledge her husband's credit ceases to exist. All the members of the court rejected this contention and approved the statement of the law as appearing in "Lush on Husband and Wife." The court also rejected a second contention that the position of the wife as to pledging her husband's credit for costs is different according as she is the attacking or defending party—a distinction for which there appeared to be some ground in the judgment of Lord Justice Scrutton in *Durnford* v. *Baker*, (1924) 2 K.B. 587, 600, but the learned Lord Justice retracted his earlier view on this point. The decision on the two points logically follows from the earlier cases of *Durnford* v. *Baker, supra,* and *Arnold & Weaver* v. *Amari,* (1928) 1 K.B. 584, but it undoubtedly bears hardly upon the wife's solicitors who, while acting for her, were quite unaware of her matrimonial offences. The court, however, drew attention to the decision of the late Sir Samuel Evans in *Jinks* v. *Jinks,* (1911) P. 120, where the withdrawal of a retainer by a wife who was the petitioner in a suit for judi-

cial separation was held not to deprive her solicitor of the right to carry in his bill and tax his costs in the Divorce Division.—*S.J.*, 1930, p. 308.

Dangerous Walking.—Almost invariably one finds that the type of pedestrian who loudly claims as much right to the road as the motorist not infrequently courts disaster by deliberately sauntering in front of approaching motor-cars with the apparently obvious intention of inconveniencing and annoying the driver. All motorists are unpleasantly familiar with this intensely objectionable class of individual and are more than justified in feeling strong resentment that no effective measures have so far been evolved to secure for him his just deserts. The already huge yearly total of road accidents continues to increase, and will doubtless do so until steps are taken to punish pedestrians as well as drivers who offend against the generally accepted rules of the road. The possibility of dealing with obdurate walkers was referred to recently by Mr. Morrison, the Minister of Transport, at the first annual meetting of the Pedestrians' Association. So far, said Mr. Morrison, we had not followed some other countries in imposing penalties for dangerous and reckless walking, and he hoped that such action would not become necessary, but if fatal road accidents continued to increase it might be necessary in the public interest to impose penalties on pedestrians who walked to the common danger. How, it may be asked, would "walking to the common danger" be defined? It would of necessity be a question of degree dependent upon a number of widely varying circumstances. The partially deaf or blind, or the aged, for instance, would, of course, be entitled to greater consideration than those in possession of their full faculties. The legislature would, we think, in all the circumstances, be unwise to introduce any punitive measures for the benefit of pedestrians, and, after all, there are few intentionally reckless walkers; most of us are only too willing to keep out of the way of a motor-car. If, moreover, the suggested course were adopted, confusion would be bound to result in actual practice when cases arose for consideration. Lastly, surely the onus of keeping out of the way, so to speak, must be on those who choose to go at a great speed in vehicles over which they should have control.—*S.J.*, 1930, p. 309.